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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Adoption of JONATHAN W., a Minor.

GEORGE S. et al.,

Plaintiffs and Respondents,

v.

SHANEISHA W.,

Defendant and Appellant

D039141

(Super. Ct. No. A47791)

APPEAL from an order of the Superior Court of San Diego County, Susan D. Huguenor, Judge. Affirmed.

Shaneisha W., the birth mother of Jonathan W., appeals from an order denying her motion to invalidate her consent to Jonathan's adoption by George and Gloria S.

Shaneisha contends the order should be reversed because (1) she revoked her consent to Jonathan's adoption within 90 days of signing the independent adoption placement agreement; and (2) her purported consent to the adoption was the result of fraud, deceit

and/or undue influence by George and Gloria. We conclude that substantial evidence supports the trial court's decision and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Shaneisha gave birth to Jonathan in May 1999, when she was 14 years old. Shaneisha and Jonathan initially lived with Shaneisha's grandmother in Georgia, but in May 2000 they came to San Diego to live with Shaneisha's mother, Lisa D. When Shaneisha and her mother developed problems getting along, Lisa allowed her daughter and Jonathan to stay with Gloria, who lived in the same four-unit apartment building. In August 2000, Lisa gave Gloria guardianship of Shaneisha.

In the fall of 2000 Shaneisha decided to join Job Corps, but in order to participate in the program, she was required to live on campus and could not take Jonathan with her. Shaneisha wanted George and Gloria to have custody of Jonathan because she could not take care of him herself and wanted to start a new life with Job Corps. They decided to explore the possibility of adoption, and Shaneisha contacted an attorney, Steven Liss. Shaneisha, George and Gloria met with Liss and agreed that he would represent all of them in the adoption of Jonathan, and signed a consent to dual representation.

On November 7, 2000, Glenda Jordan, a licensed social worker and adoptions service provider, visited Shaneisha in Gloria's home to advise Shaneisha of her legal rights and responsibilities relating to the adoption, to help her complete the forms, and to answer any questions. Jordan spent over two hours with Shaneisha, and went into "great depths" regarding the limited 90-day period in which Shaneisha could revoke her consent to the adoption. When Jordan was fully satisfied that Shaneisha had a complete

understanding of the adoption process and its ramifications, she allowed Shaneisha to sign the independent adoption placement agreement. Jordan testified there was no doubt in her mind that Shaneisha was giving her consent to the adoption freely, and noted Shaneisha was very eager to complete the process. In fact, although there is generally a 10-day waiting period from when a birth parent is counseled by an adoptions services provider and the date she signs the independent adoption placement agreement (see Fam. Code, § 8801.3, subd. (b)(1)), Jordan allowed Shaneisha to waive this waiting period because Shaneisha wanted to enter Job Corps immediately and "wanted to know that Jonathan was safely in the process of adoption."

Shaneisha signed the independent adoption placement agreement on November 7, 2000, and in doing so acknowledged that she had 90 days, beginning on the date she signed the agreement, to revoke her consent, and if she did not, the adoption would become permanent and irrevocable on the 91st day after the agreement was signed -- which Jordan had explained to her. Thus, absent revocation of consent, Jonathan's adoption would be permanent on February 5, 2001. (Former Fam. Code, § 8814.5, subd. (b).) (At the time Shaneisha consented to Jonathan's adoption, the revocation period was 90 days; Fam. Code, § 8814.5 now provides that the birth parent or parents have 30 days to revoke their consent. (See Historical & Statutory Notes, 29E West's Ann. Fam. Code (2002 ed.) § 8814.5, p. 154.)

Shaneisha entered Job Corps on November 13, 2000. She testified that on December 24, 2000, she called Gloria from her dormitory counselor's office at Job Corps and told her to stop the adoption process. However, Elaine Washington, Shaneisha's

residential advisor, testified that on that day, she gave Shaneisha money to use the pay phone to call Gloria and get permission to leave the Job Corps center for the Christmas holiday. Washington stated Shaneisha "kept losing the money because [Gloria's answering] machine was on . . . the phone. When you put your money in, and the machine comes on, you lose your money. So I kept giving her money." Washington estimated that Shaneisha made three or four phone calls without success. Shaneisha also testified that she contacted Liss on January 16, 2001, and informed him she wanted to stop the adoption process. However, Liss testified that to his knowledge, Shaneisha had not made such a call, and if she had, he would have withdrawn from the representation and advised Shaneisha to call Jordan.

Shaneisha was suspended from Job Corps on February 5, 2001, and moved back in with George and Gloria. Shaneisha's relationship with them deteriorated, however. On February 16 or later that month, Jordan called Gloria's residence and Shaneisha answered the phone. Shaneisha told Jordan she wanted Jonathan back, but Jordan told her it was too late, that "February 5[, 2001] was the 91st day" and the adoption had become final.

Although George and Gloria's petition for adoption was signed by them on December 22, 2000, it was not filed until March 2, 2001. On May 1, 2001, Shaneisha, through counsel, moved to invalidate her consent to the adoption on the ground that it was obtained through fraud, duress or undue influence. The court held an evidentiary hearing and denied the motion. It concluded there had not been undue influence, and stated, "I found [Glenda] Jordan to be an extremely credible witness. There's nothing that makes me disbelieve any of the statements that she made."

DISCUSSION

The trial court, having heard and considered the evidence and determined the credibility of the witnesses, rejected Shaneisha's claims that (1) she revoked her consent to the adoption before the 90-day period elapsed, and (2) her consent to the adoption had been obtained through fraud, duress or undue influence, and denied Shaneisha's motion to invalidate her consent to the adoption of Jonathan.

Shaneisha seeks to relitigate these claims on appeal. Our inquiry begins and ends, however, with a determination of whether there is any substantial evidence, contradicted or uncontradicted, that supports the trial court's decision. (See *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; cf. *Adoption of Matthew B.* (1991) 232 Cal.App.3d 1239, 1254 [trial court's decision on a motion to withdraw consent to adoption may be reversed only for an abuse of discretion; so long as substantial evidence supports the factual determinations, we must affirm].) We conclude that substantial evidence supports the trial court's decision to deny Shaneisha's motion to invalidate her consent. As set forth above, there is ample evidence in the record that Shaneisha was eager for Jonathan to be adopted by George and Gloria, not as the result of fraud, duress or undue influence, but so that she could enter Job Corps and because she could not take care of him herself. There is also substantial evidence that Shaneisha did not change her mind and attempt to revoke her consent to the adoption until after she was suspended from Job Corps on February 5, 2001 — following the expiration of the 90-day revocation period. Once this period expired, the adoption became permanent and irrevocable. (Fam. Code, § 8815.)

Shaneisha also contends on appeal that since the petition was not filed prior to the expiration of the 90-day consent period, she did not have the opportunity to have independent counsel appointed for her, which the court may do on its own motion pursuant to Family Code section 8800, subdivision (e). She maintains that if she had been appointed independent counsel, she would have been able to revoke her consent in writing through the proper procedures prior to the expiration of the consent period. This contention begs the question, however. Implicit in the court's denial of Shaneisha's motion to invalidate her consent are its conclusions that Shaneisha gave her consent to the adoption freely and with full knowledge of her rights and responsibilities and did not attempt to revoke her consent until after the revocation period had expired. Although the court did not make specific findings regarding Family Code section 8800 and the appointment of independent counsel, this is attributable to the fact that Shaneisha did not make this argument below.

In sum, we conclude the trial court was well within its discretion in denying Shaneisha's motion to invalidate her consent to Jonathan's adoption and that its decision is supported by substantial evidence, and thus affirm the order. (See *Adoption of Matthew B.*, *supra*, 232 Cal.App.3d at p. 1254.)

DISPOSITION

The order is affirmed. Costs are awarded to respondents.

McINTYRE, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.